HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Appeal No. 854 of 2001
2888 of 1987 (Old No.)

Kali Charan @ Kali Chandra … Appellant

Versus

State … Respondent

Approved for reporting.

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~~Not approved for reporting.~~

Date of Decision 24th September 2004.

Initial of Judge.

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IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Appeal No. 854 of 2001
2888 of 1987 (Old No.)

Reserved

Kali Charan @ Kali Chandra
S/o Sri Bhola Ram
R/o Village Bhakla
Rampur Maniyaras
District Saharanpur at present
R/o Watchman F.C.I. Jawalapur
District Saharanpur ... Appellant

Versus

State ... Respondent

Sri V.P.Srivastava assisted by Sri S.S. Adhikari learned counsel for the appellant.
Sri Amit Bhatt learned Addl. G.A. for the State

Coram:- Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

This appeal arises out against the judgment and order dated 04.12.1987 passed by Sessions Judge, Tehri Garhwal in S.T. No. 24 of 1986 State Vs. Kali Charan @ Kali Chandra convicting the appellant under Section 302/34 I.P.C. and sentencing him for life imprisonment.

Brief facts of the prosecution case are that Smt. Kamla Sharma (P.W.1) lodged a First Information Report on 27.03.1986 at about 5:00P.M. stating therein that the deceased – Smt. Lalita Devi was lying dead in her room. Smt. Lalita Devi was working as a nurse in the Health Department and was posted at Bachhelikhal. The quarter of Smt. Lalita Devi was adjoining to the godown under the charge of Smt. Kamla Sharma (informant).

On 27.03.1986 at about 12 O' clock in the noon, when Smt. Kamla went to the store/godown for keeping a signboard inside, then she felt some foul smell coming from the surroundings. Smt. Kamla Sharma could not reach to any conclusion and thought that some animal might be lying dead. She thereafter, contacted her colleague Roshni Devi in the Red Cross Child Development Department and again in her company went to the same store/godown room. They did not find anything inside the store/godown room. Thereafter, she saw that the maggots were crawling from the room of Lalita and that room was locked from outside.

Smt. Kamla Sharma intimated Pradhan and thereafter prepared the written First Information Report Ext. Ka. 1 and handed over the same to the Pradhan who gave the same at the police station Deoprayag.

Smt. Lalita was lastly seen on 14.03.1986 in her room by the informant - Smt. Kamla Sharma, who also saw a man aged about 28-29 years in her company whom she was telling her cousin.

After the registration of the case, the police came at the spot and prepared the inquest, thereafter sent the dead body of Smt. Lalita Devi for post mortem on 28.03.1986. The autopsy on the body of Smt. Lalita was conducted on 29.03.1986 at 10:00A.M. by Dr. S.C. Mishra, who found the body decomposed. Maggots were crawling all over the body. The doctor also found Maggots were present in the skull, thorax and abdomen. The head was found severed from the body. Muscles and tissues were missing. Hairs peeled off and nails were firm. The doctor found in right lumbar region, punctured

wound 8” away from anterior superior iliac spine and 4” away from midline of 3 cms X 2cms size tailing upwards direction towards right hepatic area. The doctor upon internal examination found skull and neck decomposed and vertebrae were visible. He also found the Pleura was also decomposed. The doctor also found that the lung and heart also reduced into small black material. The doctor opined that the deceased died on account of shock and haemmorhage in the ante mortem injury. He also opined that the deceased could have died on 14/15.03.1984. The doctor also opined that the ante mortem injury was to cause the death in the ordinary course of nature.

Investigating Officer prepared the sight plan and recorded the statement of witnesses, thereafter submitted the chargesheet against the appellant and one another accused Jodha Singh under Section 302 and 201 I.P.C.

After the submission of the chargesheet the appellant and another accused Jodha Singh were committed to the court of Sessions Judge and the Sessions Judge framed the charge against both the accused under Section 302/34 I.P.C. vide judgment and order dated 06.06.1987.

Both the accused persons denied of the charge leveled against them and claimed their trial.

The prosecution in order to support its case produced P.W.1 Smt. Kamla Sharma, P.W. 2 Naraian Singh, P.W. 3 Maan Singh, P.W. 4 Veer Singh – Head Constable, P.W. 5 Smt. Kasturi, P.W. 6 Dr. S.C. Mishra, P.W. 7 Dharampal and P.W. 8 Lalit Mohan (Investigating Officer)

After the evidence of the prosecution was over, the statement of the accused were recorded under Section 313 Cr.P.C. The appellant did not adduce any evidence in their defence.

Learned trial court, after having perused the entire evidence on record and hearing the learned counsel for the parties, convicted the accused Kali Charan @ Kali Chandra under Section 302/34 I.P.C. and sentenced him for life imprisonment vide judgment and order dated 04.12.1987

The learned trial court further acquitted another accused Jodha Singh of the charge under Section 302/34 I.P.C.

Feeling aggrieved by the aforesaid impugned judgment and order the accused/appellant preferred appeal before the Hon'ble Allahabad High Court, which has been transferred to this Court, for disposal, after creation of Uttaranchal State.

We have heard learned counsel for the parties and perused the record.

Before we discuss and assess the evidence available on the record, we would like to mention here that the present case rests on circumstantial evidence. The prosecution has argued that the appellant Kali Charan was the husband of the deceased Smt. Lalita and on account of the strained relations between the deceased and the appellant, they used to quarrel with each other. However, appellant wanted to get rid of Smt. Lalita and on account of the same he murdered Smt. Lalita in her room.

Learned A.G.A. has also invited out attention towards this aspect that the appellant was lastly seen in the company of the deceased.

Further learned counsel for the State has also argued that the articles recovered from the place of the occurrence i.e. mirrors, comb, hair and button of shit as well as one bottle of Whiskey contained the finger prints of the appellant. Therefore, all the circumstances clearly go to show that it was the appellant and none else who committed the murder of Smt. Lalita.

There is no doubt that the conviction can be based solely on the circumstantial evidence, but it should be tested by the touch stone of law relating the circumstantial evidence laid down by the Apex Court as far back as in 1952.

In the case of circumstantial evidence, it is well to remember that the circumstances from which the conclusion of guilt is to be drawn, should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused and none else.

A reference may be made to land mark decision of the Apex Court in *Sharad Sirdhichand Sarda Vs. State of*

Maharashtra AIR 1984 Supreme Court 1622. Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, could be fully established. They are:

1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. the circumstances concerned must or should and not may be established;
2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
3) the circumstances should be of the conclusive nature and tendency;
4) they should exclude every possible hypothesis except the one to be proved;
   and
5) there must be a chain of evidence so compete as not to leave any reasonable ground fro the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

Now, dealing with the case we firstly take the point of strained relationship between the deceased Smt. Lalita and the appellant Kali Charan. The prosecution has adduced the evidence Kalmal Sharma (P.W.1) who has

stated in her cross examination that when Kali Charan married with Smt. Lalita then he did not disclose this fact that he was already married and subsequently, when Smt. Lalita came to know of this fact she was annoyed with the appellant Kali Charan. She has further deposed that Smt. Lalita wanted to marry Jodha Singh (another co-accused in this case). She has further deposed that she heard quite often quarreling Smt. Lalita and Kali Charan each other.

Again Naraian Singh (P.W.2) has also deposed in his evidence that there was strained relationship between the deceased Smt. Lalita and the appellant Kali Charan.

It is true that there was strained relations between the deceased Smt. Lalita and the appellant Kali Charan and on account of these relations both used to quarrel each other. But merely, the strained relationship, between the appellant Kali Charan and the deceased Smt. Lalita, does not conclusively prove the guilt of murder.

The prosecution has not adduced any positive evidence in order to show that the appellant had in fact a motive to commit the murder of Smt. Lalita. It has rather come in the evidence that it was Smt. Lalita who wanted to get rid of Kali Charan by marrying with Jodha Singh who is another accused in this case and has ultimately been acquitted by the trial court. Mere circumstance that the appellant was having strained relations with the deceased will not be sufficient to warrant the conviction unless other circumstance in the present case are completing the chain without having any infirmity or the lacuna in the prosecution case.

Another circumstance in the present case is that of last scene of the appellant in the company of the deceased Smt. Lalita.

As per the prosecution case, the appellant was seen in the company of the deceased Smt. Lalita on 11.03.1986. It is the specific case of the prosecution that Smt. Lalita deceased was lastly seen in her room on 14.03.1986. Therefore, the appellant was seen in the house of Smt. Lalita approximately 3 days earlier to the day, when she was lastly seen, is of no relevance. Kamla Sharma (P.W.1) has specifically stated in her deposition before the Court that she went in the room of Smt. Lalita last time on 14.03.1986 and at that time Jodha Singh another accused who has been acquitted by the court below was lying inside the room and Smt. Lalita cleaning her hands on the roof. She has stated that it was about 6:30 or 7:00 P.M. Therefore, there is a specific version of this witness that Smt. Lalita was lastly seen in the company of another person, namely, Jodha Singh on 14.03.1986. This witness has further deposed that she had seen Jodha Singh in the company of Smt. Lalita upto 14.03.1986 at least 3-4 times. This witness has further deposed that she saw the appellant Kali Charan who had come to the deceased Smt. Lalita on 11.03.0986 did not stay in her room in the night. Therefore, by no stretch of evidence it can be concluded that the deceased was lastly seen in the company of the appellant Kali Charan. The evidence is specific to this affect that the deceased Lalita was lastly seen in the company of Jodha Singh who was already been acquitted by the trial court.

Further Narain Singh (P.W.2) has deposed in his examination before the court that he saw Kali Charan appellant in the room of Smt. Lalita on 11.03.1986. This witness has also deposed that he saw appellant Kali Charan and Smt. Lalita – deceased on 07.03.1986 at bus stand where Smt. Lalita was abusing him and was asking that he should not come to her place again and the appellant Kali Charan replied that he would not come.

Again Maan Singh (P.W.3) has also deposed in his statement that on 11.03.1986 at about 4:00-5:00A.M. Kali Charan asked him as to where Lalita was. He replied that he does not know and thereafter Kali Charan went away. This witness has further deposed that he saw another person in the company of Smt. Lalita on 14.03.1986. This witness identified that person as Jodha Singh before the trial court.

The only conclusion can be drawn on the basis of the evidence adduced by the prosecution that the appellant Kali Charan was seen in the company of the deceased Smt. Lalita on 11.03.1986 while the deceased Smt. Lalita was lastly seen on 14.03.1986 in the company of another person, namely, Jodha Singh.

The prosecution has also tried to establish that Kali Charan and Smt. Lalita had been quarreling at bus stand on 07.03.1986 but this factor further does not alone appears to be conclusive to prove the guilt of the appellant. The evidence with regard to the last seen of the appellant Kali Charan in the company of the deceased does not appears to be trustworthy and it cannot be said on the basis of the evidence adduced by the prosecution that the appellant had lastly been seen in the company of

the deceased on 14.03.1986 when she was seen alive lastly.

Another important circumstance in the case, is the finger prints found on the mirrors as well as on the bottle of Whiskey recovered from the room of the deceased. The Ext. Ka. 12 is the memo which shows that a bottle of Whiskey containing the finger prints, one white metallic ear ring, one white button of shirt, one comb and two mirrors were found from the room where Smt. Lalita was found dead and these articles were recovered by the police and after recovering of the same, the police kept them under the seal cover.

The evidence further shows that the Investigating Officer sent two mirrors and one bottle of Binney Whiskey containing the finger prints along with specimen finger prints vide letter dated 16.06.1986. Some dates, in order to reach a definite conclusion in this regard would be relevant.

a) chargesheet was submitted against the appellant and the another accused Jodha Singh on 16.05.1986.

b) the letter along with the recovered articles i.e. mirrors and Whiskey bottle containing the finger prints as well as specimen finger prints was sent on 16.06.1986 i.e. after one month of submitting the chargesheet against the appellant and the another accused Jodh Singh.

c) the aforesaid letter along with the finger prints on the recovered articles as well as the specimen finger prints was received by the

Office of the Director Finger Prints on 21.06.1986.

The report of the Finger Print Expert is available on the record as Ext. Ka. 18 and it reveals that the specimen finger prints of one of the accused taken on 17/18.06.1986 has also been sent through the letter No. 3179/86 dated 16.06.1986. This does not appear to be probable as to how the specimen finger prints taken on 17/18.6.1986 pertaining to accused could be sent earlier i.e. vide letter dated 16.06.1986.

It is further important to mention here that the mirrors and Whiskey bottle allegedly containing the finger prints of the appellant Kali Charan were recovered from the room where the deceased Smt. Lalita was lying on 28.03.1986 and since then these articles were kept at the police station Malkhana. The Investigation Agency has not offered any explanation as to the articles recovered on 28.03.1986 were kept sealed and intact at the police station and the same articles sent to public analyst in the sealed and intact condition and these articles were received by the public analyst in a sealed and intact condition.

The appellant was arrested by the police on 16.04.1986, hence sending the specimen finger print on 16.06.1986 creates a doubt with regard to the genuineness of the evidence. Why and how the Investigating Agency kept the recovered articles as well as the specimen finger prints of the appellant for two months with it. The Investigating Agency could have sent the recovered articles as well as specimen finger prints pertaining to the

appellant as early as possible after the arrest of Kali Charan appellant which could take place on 16.04.1986.

The Ext. Ka. 18 is the report of the Finger Print Expert clearly indicates that the Investigating Officer has sent the letter along with the recovered articles and the specimen finger prints to the Finger Print Expert in a very careless and cursory manner and this carelessness on the part of the prosecution creates a serious mistrust as to genuineness of the evidence.

The incrementing circumstance against the appellant was that his finger prints was found on the mirrors as well as on the bottle of Whiskey which were found from the room where the dead body of Smt. Lalita was lying. The mirrors and the bottle of Whiskey was seized and the same were packaged and sealed, thereafter forwarded of Finger Print Expert. The Finger Print Expert gave the report with the opinion that the chance finger prints found on the mirrors and Whiskey bottle were similar to and identical with the specimen finger prints of the appellant. However, the prosecution has failed to establish that the seized articles were not- or could not be - tempered with before it reached the expert for examination.

Though evidence has been led by the prosecution to prove that after seizure, the articles were packaged and then sealed but no evidence has been led to indicate what was the marked given in the seal and whether the expert received the packages with the marked seals intact. Rather, other circumstances appearing on record make the prosecution case doubtful in this regard firstly, the articles were kept in the police station for about more

than 2 ½ months without any justifiable reason. Secondly, the Investigating Officer could not show that these articles were kept in the police station intact till they were sent to the public analyst.

Apart from the above missing link and the suspicious circumstances surrounding the same, there is another circumstance which also cast a serious mistrust as to genuineness of the evidence. The specimen finger prints of the appellant Kali Charan had to be taken on a number of occasion at the behest of the Expert, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take finger prints of the accused, but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate.

The other related infirmity from which the prosecution case suffers is that the mirrors and the bottle of Whiskey, production of which would have been the best evidence in proof of the claim of its seizure and subsequent examination by the expert, was not produced and exhibited during trial, for the reasons best known to the prosecution and unknown to the court.

No other circumstance could be placed by the prosecution before us.

We thus, come to conclusion that the aforementioned circumstances discussed by us do not by itself establish the guilt of the appellant.

We are, therefore, of the definite view that the conviction of the appellant and the sentence thereon recorded by the trial court by way of the impugned judgment is liable to be set aside.

On the conclusion as above, we allow the appeal and set aside the conviction of the appellant and acquit him.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

September 24, 2004
ASWAL